ORIGINAL

FILED

08 MAR 14 PM 1:24

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: CP DEPUTY

Robert Ted Parker (SBN 43024)
Raymond E. Loughrey (SBN 194363)
Kara V. Warner (SBN 244964)
KIRKPATRICK & LOCKHART PRESTON
GATES ELLIS LLP
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Telephone: (415) 882-8200
Facsimile: (415) 882-8220

Attorneys for Plaintiffs SAIGUT S.A. de C.V.
and SAIPEM S.A.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAIGUT S.A. de C.V., a Mexican corporation; and SAIPEM S.A., a French corporation,

Plaintiffs,

vs.

SEMPRA ENERGY, a California corporation; SEMPRA LNG, a Delaware corporation; ENERGIA COSTA AZUL, S. de R.L, de C.V., a Mexican corporation; BVT LNG COSTA AZUL, S. de R.L. de C.V., a Mexican corporation; COSTA AZUL BMVT, S.A. de C.V., a Mexican corporation; BLACK & VEATCH CORPORATION, a Delaware corporation; TECHINT S.A. de C.V., a Mexican corporation; THE KLEINFELDER GROUP, INC., a California corporation; ARUP NORTH AMERICA LIMITED, a United Kingdom corporation; ARUP TEXAS, INC., a Texas corporation; WHESSOE OIL & GAS LIMITED, a United Kingdom corporation; Q&S ENGINEERING, INC., a California corporation; and DOES 1 through 20, inclusive,

Defendants.

Case No. '08 CV 0478 JM BLM

COMPLAINT FOR DAMAGES AND OTHER RELIEF

- Negligence
- Negligent Misrepresentation
- Breach of Implied Warranty of Information
- Breach of Duty of Non-Hindrance
- Breach of Contract
- Breach of Good Faith Covenant
- Fraud
- Cardinal Change/*Quantum Meruit*
- Mutual Mistake
- *Quantum Meruit for* Reasonable Value of Work Performed
- Constructive Acceleration
- Injunctive Relief

JURY TRIAL DEMANDED

Plaintiffs SAIGUT S.A. de C.V. and SAIPEM S.A. complain of defendants as follows:

THE PARTIES

1. Plaintiff SAIGUT S.A. de C.V. ("SaiGut") is a corporation formed under Mexican law, with its business in Ensenada, Baja California, Mexico. SaiGut has constructed marine works

and a related facility for a liquefied natural gas ("LNG") regasification terminal at Costa Azul, near Ensenada. SaiGut was jointly formed with Corporaçion Gutsa, S.A. de C.V. SAIPEM S.A. is now the sole owner. SaiGut is thinly capitalized and exists solely as a single-purpose entity.

2. Plaintiff SAIPEM S.A. ("Saipem") is a corporation formed under French law, with offices in Saint Quentin-en-Yvelines, France. Saipem is engaged in offshore marine construction, including LNG receipt terminal facilities and oil rigs.

3. Defendant SEMPRA ENERGY ("Sempra Energy") is a corporation formed under California law with San Diego principal offices. Sempra Energy develops and operates energy infrastructure, energy utilities, and related products.

4. Defendant SEMPRA LNG ("Sempra LNG") is a corporation formed under Delaware law with San Diego principal offices. Sempra LNG is affiliated with Sempra Energy and develops and operates energy infrastructure, including LNG regasification terminals in Baja California and elsewhere, and provides related products and services. (Sempra Energy and Sempra LNG are referred to together as "Sempra").

5. Defendant ENERGIA COSTA AZUL, S.A. de C.V. ("ECA") is a corporation formed under Mexican law with principal offices in San Diego, California. ECA is thinly capitalized and is a single-purpose entity. (Sempra Energy, Sempra LNG and ECA are collectively referred to as "the Sempra Defendants").

6. Defendant COSTA AZUL BMVT, S.A. de C.V. ("BMVT") is a corporation formed under Mexican law with offices in Mexico, D.F. BMVT is thinly capitalized and exists solely as a single-purpose entity, and entered into the Prime Contract described herein in San Diego, California.

7. Defendant BLACK & VEATCH CORPORATION ("Black & Veatch") is a Delaware corporation with offices in Overland Park, Kansas, and substantial contacts in California of a continuous and systematic nature, with seven offices Statewide, one at 9820 Willow Creek Dr., San Diego, and did ample work here on the LNG project.

8. Defendant TECHINT S.A. de C.V. ("Techint") is a corporation formed under Mexican law with offices in Mexico, D.F. On information and belief, Techint has done substantial business in this judicial district which concerns the LNG terminal, and is the alter ego of BVT/BMVT.

9. Defendant BVT LNG COSTA AZUL, S. de R.L. de C.V. ("BVT") is a corporation formed under Mexican law as a thinly-capitalized, single-purpose entity by Black & Veatch and Techint, with offices in Mexico, D.F. BVT has done substantial business in this judicial district in connection with the LNG terminal construction, and has agreed to dispute resolution in a California forum. (Black & Veatch, Techint, BMVT, BVT are together named as "the BVT Defendants").

10. Defendant THE KLEINFELDER GROUP, INC. ("Kleinfelder") is a corporation formed under California law with principal offices in San Diego. Kleinfelder provided engineering, environmental and construction-related services within San Diego in connection with the LNG terminal project.

11. Defendant ARUP NORTH AMERICA LIMITED d/b/a "ARUP ENERGY" is a corporation formed under United Kingdom law, and Defendant ARUP TEXAS, INC. is a corporation formed under Texas law (together, "Arup"), each having offices in Houston, Texas. Arup provided engineering consultation and design services to Sempra Energy in San Diego in connection with the LNG terminal project.

12. Defendant WHESSOE OIL & GAS LIMITED ("Whessoe") is a corporation formed under United Kingdom law, with offices at Princes Gate, London, U.K. Whessoe provided engineering design and consultation services to Sempra Energy in San Diego in connection with the LNG terminal project.

13. Defendant Q&S ENGINEERING, INC. ("Q&S") is a corporation formed under California law with principal offices in Escondido, California. Q&S provided aquatic science and oceanographic consulting services to the LNG terminal project.

14. A unity of interest exists within each of the following groups of entities: (1) ECA, with its parent entities Sempra LNG and Sempra Energy, (2) BVT and BMVT, with their parent entities Black & Veatch and Techint, and (3) Arup Energy and Arup Texas, Inc., such that any individuality and separateness between members of each of the three groups does not exist. In all material respects (1) Sempra exercises dominion and control over ECA, and ECA acts as an instrumentality, agent, or conduit, to be a functioning alter ego, and (2) Black & Veatch and Techint exercise dominion and control over BVT and BMVT, and BVT and BMVT act as their agents,

instrumentalities, or conduits, so that BVT and BMVT are their functioning alter egos, and (3) Arup Energy exercises dominion and control over Arup Texas, Inc., which acts as its agent, instrumentality and conduit to be its functioning alter ego.

15. Plaintiffs are informed and allege that (1) Sempra LNG and Sempra Energy formed ECA, and (2) Black & Veatch and Techint formed BVT and BMVT, to artificially shield themselves from liability to Plaintiffs and other creditors.

16. Plaintiffs are informed and allege that (A) Sempra Energy and Sempra LNG have used ECA, and Black & Veatch and Techint have used BVT and BMVT, to perpetrate wrongful and inequitable acts, including the attempt to avoid responsibility for matters alleged herein, for their own benefit and to Plaintiffs' detriment; and that (B) adherence to the fiction of the separate existence of (i) ECA distinct from Sempra Energy and Sempra LNG, and (ii) BVT and BMVT distinct from Black & Veatch and Techint, would permit abuse of corporate privilege and promote injustice as said Defendants could thus shield themselves from liability and perpetrate a fraud upon Plaintiffs.

17. Plaintiffs do not know the true names and capacities of Defendants named herein as DOES 1 through 20, inclusive, and therefore sue these Defendants by fictitious names. Each Doe Defendant is responsible in some manner for the acts, omissions and damages alleged herein. Plaintiffs will amend to allege their true names and capacities.

18. Each Defendant was the principal, agent, partner, associate, joint venturer, successor-in-interest, and actor in concert with and under the direction and control of, each remaining Defendant, and within the scope of these relationships.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a)(2) as there is complete diversity of citizenship between Plaintiffs and Defendants as the action is between citizens of a state and citizens of a foreign state, and the amount in controversy exceeds $75,000.00, exclusive of interest and costs.

20. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a)(3) because all Defendants are either present and maintaining their principal offices here, or carrying on substantial continuous and systematic business here, or they (or through an *alter ego*) have transacted business

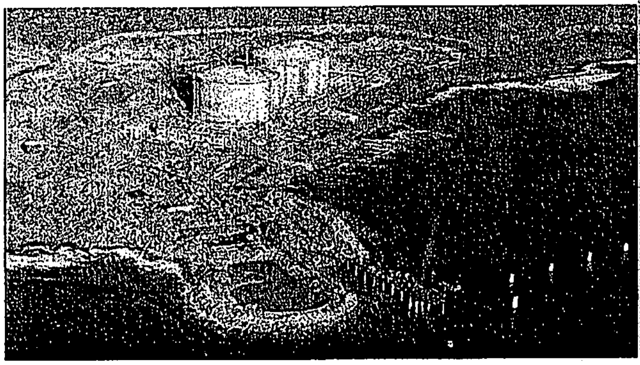
here in connection with the LNG terminal project, or engaged in wrongful acts here alleged within this judicial district.

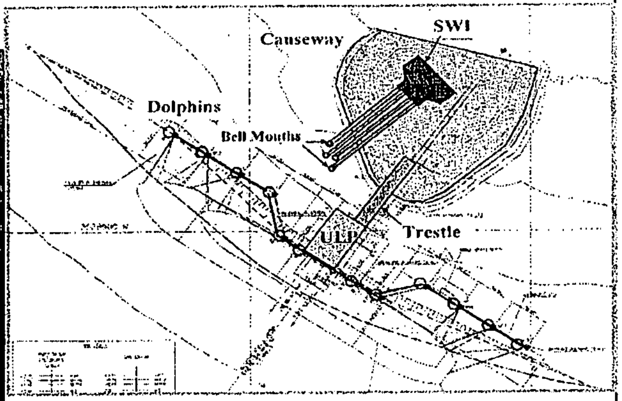
STATEMENT OF FACTS

A. Introduction: Facts Common to All Claims

21. In 2001, Sempra Energy resolved to build an LNG receiving terminal in Baja California named Energia Costa Azul, about fourteen miles north of Ensenada. Plans called for ships to dock at the berthing facility 200 meters off the Mexican coast and unload LNG at -162 degrees centigrade for temporary storage in the facility's onshore tanks. The LNG would be "regasified" in exchangers with seawater pumped in at the facility, and then transmitted in compressed form into the western United States through a new forty-five mile gas pipeline. The LNG terminal (apart from the offshore breakwater) would be comprised of the following: (1) a LNG ship berthing jetty structure consisting of a central an unloading platform with associated dolphins (four breasting and eight mooring dolphins) and an approach trestle accommodating the necessary piping, cables and access roadway to link the unloading platform to the shore; (2) two LNG storage tanks; (3) the process plant which regasifies the LNG and (4) an export pipeline system. The Costa Azul LNG terminal would be the first of three LNG receiving terminals that Sempra Energy planned to build. Although initial plans included a Shell Oil Co. affiliate as a prospective joint venture partner at Costa Azul, Shell later withdrew from the venture. A photograph and diagram of the LNG terminal appear below. Other photos and information are available at:

http://www.energiacostaazul.com.mx/English/constructionupdate.htm





22. Sempra Energy formed its wholly-owned subsidiary, Sempra LNG, to administer its overall LNG terminal development program. Sempra Energy also formed ECA as the Mexican entity to own and operate the LNG terminal at Costa Azul. ECA split the Costa Azul LNG terminal project into two principal contracts: WP1 (the "Prime Contract"), for construction of the LNG receiving terminal and near-shore marine facilities (the "LNG Terminal"), and WP2, for an offshore breakwater.

23. As it lacked LNG marine construction experience, Sempra Energy hired Kleinfelder for onshore and offshore site investigation and Arup as its marine engineering consultant for the Marine Works aspect. With assistance from Whessoe, Sempra revised the project's offshore scope in 2003 and retained Kleinfelder to produce an offshore geotechnical and geological hazard report to evaluate the soil, geologic and seismic conditions at the site, and to make recommendations for design and construction. Arup was to provide expert marine engineering advice, review all available offshore geotechnical and geophysical survey information and reports from other consultants, and confirm the data to be used for preparation of engineering documentation. Arup was also to advise Sempra for any further survey work prior to final design and construction.

24. Sempra obtained some site survey reports from Shell and, with Arup's advice, utilized various additional consultants to make technical surveys of the terminal site and produce site investigation reports ("Site Reports") describing the soils, rock strata, ocean floor conditions of the site to establish feasibility and enable informed design and construction of the terminal facilities. Among the Site Reports so commissioned and utilized were the following:

a. Thales Geophysical Report, dated March 18, 2003 (the "Thales Report") (geophysical surveys of part of Site and adjoining site);

b. Whessoe General Design Basis, Marine Facilities Design Basis, Marine Piling Specification, draft June 12, 2003, final August 2004 (each a "FEED Study") (overall layout design for LNG terminal with Marine Facilities);

c. Kleinfelder Offshore Geotechnical Investigation, dated November 21, 2003, and revised June 4, 2004 (the "Kleinfelder Report") (six boreholes drilled in August 2003 to rock levels, but not at Jetty or Dolphin locations);

d. Baird Hindcast and Berth Downtime Analysis, Wave Climate and Marine Operability Analysis Costa Azul, dated May 10, 2004 ("Baird Reports");

e. Arup Ocean and Land Datum Survey & Recommendations, dated June 4, 2004 (the "Arup Report") (review of Site Reports by engineering advisor);

f. Fugro Pelagos Marine Geophysical Survey dated September 17, 2004, and reports of Bathymetry, Seabed Features, Seabed Imagery, Isopacks, Depth of Rock below MLLW (the "Fugro Pelagos Reports");

g. Q&S Seafloor Probe Report, dated March 9, 2005 (the "Q&S Report") (limited jet-probing testing).

25. All Site Reports (except Q&S) were obtained by Sempra and reviewed by Arup prior to award of any construction contracts. Kleinfelder concluded that its boreholes were correctly placed at the locations for jetty and dolphin pilings to be later installed, but this was wrong. Arup ignored that error, but did notice datum conflicts and recommended that Kleinfelder Report be "for information only." Sempra ignored this advice, and designated the Kleinfelder Report as "Rely Upon Information" (and also Thales Report, with conflicting data) when ECA awarded the Prime Contract to Elina Sistemas Del Norte, S.A. de C.V. ("Elina") on December 20, 2004. In early February 2005, Elina assigned the Prime Contract to BMVT. BMVT is a consortium of four global construction/engineering companies: Black & Veatch; Mitsubishi Heavy Industries, Ltd.; Vinci Construction Grands Projets; and Techint, and led by Black & Veatch. BMVT has acted as the prime contractor and further allocated to a sub-consortium comprised of Black & Veatch and Techint ("BVT") the portion of the Work covering the Jetty and Dolphins (the "Marine Facilities") and the Seawater Intake (the "SWI") structure, while BMVT kept responsibility for the other land-based Terminal facilities and Tanks.

26. After its award, BVT commissioned a further Q&S geophysical seafloor probing report which used PVC jet probes of unlikely accuracy, but Q&S claimed nonetheless to "generally confirm" the Kleinfelder data in its March 2005 report. In May 2005, BVT awarded a subcontract to SaiGut (the "Subcontract"), for construction of the Marine Facilities and, later, the construction of the SWI structure. In its bid for Marine Facilities construction, SaiGut designated conservatively-

designed pile dimensions, made extra-over material quantity allowances in its pile procurement and fabrication schedule, and made extra over-allowances in its jack-up rig allocation.

B. The Pile Foundation Claims

27. Plaintiffs' first set of claims arise from certain survey information in Site Reports that the Sempra Defendants provided with the Invitation to Bid documents for WP1 regarding the subsurface marine conditions, which, after BMVT was awarded the Prime Contract, were provided by BVT to SaiGut pursuant to the Subcontract. Some of the Site Reports were provided "for information only," and others were offered as "Rely Upon Information" for contractors in assessing the resources, techniques and costs of construction, formulating a "critical path" construction plan, and submitting a bid. Appendix A-1 to the Prime Contract stated: "where categorized as 'Rely Upon Information,' the Contractor is entitled to rely upon the accuracy of the information without further verification," and this was incorporated into the Subcontract. The Site Reports provided as "Rely Upon Information" included the Thales Report, the Kleinfelder Report, and several Whessoe FEED studies. However, the Rely Upon Information did not accurately represent the subsurface conditions at the project site. Rather, it contained numerous material inaccuracies, particularly with respect to bathymetry, subsurface rock levels, and the quality of the rock beneath the ocean surface where SaiGut was to construct the pile foundations for the Marine Facilities. In addition, the Rely Upon Information was internally inconsistent as utilizing conflicting datums, without any concordance to synthesize the information there set forth.

28. In the same Invitation to Bid documents, and later on in the Subcontract bidding documents, the Arup and Fugro Pelagos Reports were provided "for information only." Plaintiffs are informed and allege that both Arup and Fugro Pelagos, Inc., a hydrographic and seabed consultant, relied on information in the Kleinfelder and Thales Reports in preparing their reports: the Arup Report dated June 4, 2004 and the Fugro Report dated September 17, 2004. The Kleinfelder Report was the only source of geotechnical data (i.e., resulting from drilling boreholes) provided by the Sempra Defendants on which contractors could base the design, procurement, and construction elements of their bids. SaiGut relied upon the Kleinfelder Report in preparing its bid for the Marine Facilities as Invitation to Bid documents had authorized.

29. The Prime Contract attached materials stating the parties' assertions of their respective contractual obligations. In Appendix GG, Item 129, BVT asserted the impracticability of authorizing further pre-construction marine investigation as follows: "we [BMVT] have based our proposed marine work design on the geotechnical site investigation documents provided." On Kleinfelder's expressed concerns about rock elevation, rock quality, and sub-bottom boulders, BVT stated, "these [issues] can only be determined at the time of actual installations of the piling. It is not feasible, based on the aggressive Project schedule nor [*sic*] the specialty equipment required, for BMVT to perform additional marine investigations prior to the site construction mobilization and installation work." ECA responded with "Agreed," and the Sempra and BVT Defendants thus combined to attempt to pass on the problems of conflicting and inadequate information to the Marine Works Subcontractor, who was then still to be named. Although BVT later put Appendix GG into the Subcontract, it had still found time to commission the March 2005 Q&S Report jet-probe investigation, despite its dubious conclusions, and could have obtained accurate borehole testing in that time at the precise location of the piles.

30. The Prime Contract also provided that, during a 90-day "Site Investigation Period," BMVT "shall . . . investigate the Site Conditions . . . in accordance with Prudent Industry Practices," thus allowing further bathymetric and geotechnical investigation, but that thereafter, "Contractor shall be deemed to have obtained all necessary information as to risks" that "may affect the Work." Five months elapsed before execution of the Subcontract in May 2005, although the parties had frequent contact due to a limited notice to proceed. BVT failed, during this period, to inform SaiGut of the 90-day Site Investigation requirements, or that the 90-day period had already lapsed when the Subcontract was signed, or that BVT or BMVT had allowed it to lapse without any notice of subsurface conditions differing from the Site Reports. Such omissions likely had the legal effect of allocating the entire risk of unforeseen site conditions on BVT.

31. The terms of the Subcontract (¶550.50), however, provided that SaiGut "has satisfied itself as to the character. . . of surface and subsurface conditions . . .insofar as this information is reasonably ascertainable from an inspection of the Jobsite and Subcontract Documents." This Subcontract provision limited SaiGut's risk of unforeseen conditions to those reasonably

ascertainable from inspection, which was a legal right actively sought by SaiGut representatives. This provision remained in the Subcontract signed by SaiGut and BVT, and was never amended. Yet BVT attempted to effect a verbal amendment of the provision by assuring SaiGut, in a meeting during April 2005 that, if SaiGut would accept the risk of soil conditions and thereafter should encounter a variance in actual conditions from Rely Upon Information, BVT would obtain compensation from the owner, ECA, on a "pass-thru" basis. BVT knew or should have known, however, that its assurances were misleading, since BVT knew it had already accepted the site conditions risk under the Prime Contract, and had no legal right to present a pass-thru claim to ECA. BVT failed to disclose this fact while assuring SaiGut of its pass-thru rights, and failed until 2008 to allow SaiGut to even see the Prime Contract by which BVT had undertaken such risk.

32. In fact, the actual site conditions differed substantially from the data presented in the Rely Upon Information, and this greatly impacted both SaiGut's complexity of performance and its construction schedule and costs. SaiGut was forced to exceed its bid allowances and expend significant additional resources on labor, equipment, and materials due to extra work necessitated by unforeseen subsurface conditions, and SaiGut's work was substantially delayed due to the misinformation.

33. Stated generally, Plaintiff's damages stem from Defendants' failure to synthesize inconsistent Site Report data and identify inadequate Rely Upon Information. For example, the Rely Upon Information included inconsistent MSL (mean sea level) or MLLW (mean lower low water) measurement datums, failed to measure offshore locations planned as the Dolphin locations, and offered data from a mere 6 boreholes, thus producing very paltry information about the seabed conditions. Kleinfelder did, however, send a *caveat* to make further geotechnical borings if the location of pile foundations should change from those assumed in the Kleinfelder Report (which later occurred, as the Jetty layout was extended and repositioned by Sempra and Whessoe). The Sempra and BVT Defendants, advised by Arup and Whessoe, failed to follow Kleinfelder's recommendation for further borehole testing, just as they ignored Arup's own *caveat* that the Kleinfelder Report should be used "for information only." These Defendants also failed to consider that data inaccuracy at this Project presented an even higher degree of risk than normal due to the Mexican NEA's

prohibition on open water blasting, which is often used to eliminate unforeseen seabed irregularities. Indeed, the Sempra and BVT Defendants failed one final opportunity to correct the errors of the Rely Upon Information, which SaiGut brought to their (and Arup's) attention. After execution of the Subcontract, a Fugro S.A. survey for seismic data also produced bathymetric data showing top of rock data which differed from the Kleinfelder measurements. SaiGut notified BVT of the discrepancy and furnished BVT with the Fugro S.A. report, which, upon information, BVT passed along to ECA. Yet ECA and BVT rejected the new data, now abruptly citing the superior reliability of geotechnical (drilling) surveys over geophysical (merely probing) ones.

34. During construction, the rock head levels encountered were often lower than the Kleinfelder Report indicated, although some were higher, and variations ranged up to 4.5 meters between anticipated rock head depths and actual depths. Regarding pile foundation work, the vertical datum inconsistencies in water, sediment and rock depths meant that 13 of the 14 pre-fabricated steel piles were unsuited for the actual depths of sediment and competent rock. Some of the lengthened dolphins were too heavy for SaiGut's existing equipment to install, so they had to be cut into two sections and then spliced back together *in situ* over water, significantly changing the construction methodology. In addition, SaiGut encountered highly variable subsurface rock with fractures, fissures, and steep slopes that were not apparent from the factual data in the Kleinfelder Report. These variances caused SaiGut serious difficulties and delays in installing the jetty and dolphin pile foundations, resulting in significant additional labor and equipment expenses.

35. The Rely Upon Information also contained inaccuracies due to wrong use and interpretation of data. For example, the Kleinfelder Report stated data of isobaths, sediment thickness (and inferred top of rock elevation) without stating whether they were at MSL (mean sea level) or MLLW (mean lower low water) despite an 84cm difference between them; later stated bathymetry level lines and top of rock elevation in MLLW; and borehole logs and sea level data without specifying MSL or MLLW. Upon information and belief, since the differences in reported and actual top of rock elevations appear up to 4.5 meters, it is likely that Kleinfelder mistakenly used MSL or MLLW data. The tide corrections Kleinfelder used to determine sea level at boreholes also were erroneous. Then, adding to the misrepresentations, the Q&S Report in March 2005 claimed to

"confirm" the Kleinfelder data.

36. SaiGut was required to rely, and did rely, on the Kleinfelder Report and other Rely Upon Information issued by the Sempra and BVT Defendants in determining the quantities of steel tubing required to build the piles. SaiGut based its bid for the Marine Facilities on a total steel weight of 2,291 metric tons. As a precaution, SaiGut added 145 tons of piling steel to its existing order and requested a change order from BVT to accommodate this. Subsequently, based on the differing conditions encountered during the drilling work, SaiGut had to order another 163 tons of piling steel. The 309 tons of extra steel required, and delays incurred in procuring them, compounded the damages that SaiGut suffered from the inaccuracies in the Rely Upon Information.

37. Arup issued its own Report on June 4, 2004, the same day the Kleinfelder Report was issued. The Arup Report was "for information only" and not "Rely Upon" purposes, and contained recommendations based on a November 2003 version of the Kleinfelder Report. In a minor reference, the Arup Report identified earlier Kleinfelder reports as suitable "for information only" purposes, not as Rely Upon Information, and fails to mention the 2004 Kleinfelder Report. The Arup Report also points out discrepancies between Kleinfelder borehole water depths and Thales bathymetry ranging from -3.74m to +3.64m, and notes the 0.84m difference between the MSL and MLLW datums used by Thales and Kleinfelder, respectively.

38. Nonetheless, the Sempra Defendants issued both the Thales and Kleinfelder Reports as Rely Upon Information despite their identified deficiencies and inconsistencies. Six boreholes is not sufficient to meet Prudent Industry Practices for LNG berthing dolphin and pile design, which normally require at least one borehole at the specific location of each dolphin. Yet the Sempra Defendants made no further rock boring investigations before awarding the Prime Contract, despite having reason to know that the Report's accuracy on boreholes, sediment depth, water level datums, sediment thickness, rock profile and depth of competent rock was questioned by their own experts, and subsequently challenged in its award to BMVT.

39. The defective Rely Upon Information damaged SaiGut in two ways. First, the erroneous data regarding subsurface rock quality and rock levels led SaiGut to underestimate the total cost of labor, equipment and materials needed to complete the Marine Facilities. As a result, SaiGut

was unable to maintain its schedules and methodology, forcing it to overrun its reasonable bid allowances. Second, SaiGut's reliance on the inaccurate data required it to perform work and procure materials without additional compensation or time extension, and outside the scope of the Subcontract.

40. SaiGut also suffered damage and delay as a result of unforeseen jobsite conditions. The unforeseen conditions include highly variable depth of sediment overburden, a highly variable rock head profile, steeply sloping surfaces into which drilling work was required, and fissures and crevasses in the rock head causing major difficulties in sealing the casings into the rock and drilling dolphin sockets sufficiently deeply through unsuitable rock until competent load-bearing rock is achieved. These unforeseen conditions could not have been ascertained from a site inspection, as the conditions are not visible, or from the Subcontract documents, which do not adequately address the specific conditions encountered at each dolphin and pile structural location, and prevailing sediment layers over the general site.

41. SaiGut nevertheless made extraordinary efforts to perform its obligations under the Subcontract and avoid interfering with BMVT's performance. SaiGut completed construction of the Dolphins in August 2007, approximately nine months after the scheduled completion date. SaiGut installed all pile foundations using a conservative and competent design. SaiGut achieved all design criteria, pile tests, and hold and witness points. The overall quality of the engineering, procurement, and construction clearly meet SaiGut's obligations under the Subcontract.

42. Delays in SaiGut's performance are also attributable to the delayed and late construction of a breakwater structure by China Harbour & Engineering Co. and Costain. While the primary purpose of the breakwater was to assure a high level of berth availability at the unloading platform, the breakwater would also provide valuable temporary protection and stabilization for SaiGut's concurrent near-shore construction efforts towards the end of 2006. However, the breakwater was less than 10% installed in 2006 and still remains incomplete. Consequences of the delayed construction of the breakwater include loss of weather protection from wave action, changed current and sedimentation patterns that added to SaiGut's construction difficulties, and wave impact that delayed and otherwise impeded SaiGut's rate of construction.

43. SaiGut fulfilled its obligation under the Subcontract to inform BVT and ECA of the differing site conditions, the defects in the Rely Upon Information, the non-performance of ECA's subcontractors and their effect on SaiGut's performance. SaiGut first notified BVT of the defective Rely Upon Information in August 2005 upon receipt of the Fugro S.A. Report which SaiGut copied to BVT. SaiGut submitted a formal claim to BVT in October 2005 for pass-thru to ECA, but BVT delayed transmitting to ECA for six months until chided by SaiGut. SaiGut again submitted a claim on May 23, 2007 and again on November 7, 2007. All such claims sought both monetary compensation and extension of time for excusable and compensable delay due to the defective Rely Upon Information. ECA and BVT initially rejected the claims on June 13, 2007 and made a final rejection on December 18, 2007.

C. The Seawater Intake Structure Claims

44. Plaintiffs' second set of claims arise from the construction of the Sea Water Intake (SWI) structure, a critical component of the LNG Terminal. The SWI structure draws seawater through undersea pipes (bellmouths and pipe basin) into a series of chambers that screen out sediment and other debris (pump pit area). The seawater is then pumped into a sprinkling system, which distributes the water over heat exchangers containing LNG, gradually raising the temperature of the LNG and converting it from a liquefied to a gaseous state. The slightly colder seawater is then returned to the sea. The gas is then compressed and transported in a pipeline to its destination. The nature of the Subcontract denied SaiGut working as an independent contractor. Instead, BVT undertook certain key activities that were in SaiGut's critical path, and thus for which SaiGut was reliant upon BVT for their timely completion. For instance, BVT was to have handed over the "pump pit area" in January 2006 and the "pipe basin area" in sections between early April and mid-July 2006 to enable SaiGut to commence construction activities. BVT failed to do so. The Subcontract provided that BVT was to perform onshore deep blasting of the pump pit area to a sufficient subsurface rock "fracturation" so as to allow SaiGut to then remove the rock and erect the concrete pump pit structure inside the blasted and excavated volume. The same division of work was to be observed for the trenches on which the sea-water intake pipes were to be installed.

45. According to an April 14, 2006 agreement with BVT, BVT was to provide SaiGut

with access to the SWI pump pit area no later than May 22, 2006. However, BVT failed to provide SaiGut with timely access, preventing SaiGut from starting the sheet piles any earlier than August 14, 2006. BVT has admitted that this delayed SaiGut's construction of the SWI structure by 79 days. Meanwhile, SaiGut's equipment remained on standby, or was put to less efficient use elsewhere. BVT's failure to timely handover the pump pit area resulted in delay costs to SaiGut, as well as wasted overhead. SaiGut's ability to drive sheet piles was further delayed as a result of BVT's improper blasting, which extended the completion of this work to October 11, 2006.

46. SaiGut also has claims based upon BVT's improper blasting of subsurface rock in the area of the SWI structure. First, BVT's blasting subcontractors, Bonifaci & Curiel ("BCI"), improperly blasted the subsurface rock basin for the future pump pit in which the SWI structure was to be constructed. Second, BCI improperly blasted the trenches in which the underwater intake pipes leading to the SWI structure were to be laid. This improper blasting resulted in SaiGut's expending extra engineering, construction labor, materials, plant and engineering in delay mitigation attempts and other delays that damaged SaiGut and interfered with its ability to perform its independent responsibilities under the Subcontract.

47. BVT agreed to provide an excavated peripheral trench in the pump pit to a depth of -11.5 MLLW through which SaiGut could drive steel sheet piles to create working space for SaiGut to build the perimeter of the SWI structure. But BVT was only able to achieve some 30%, leaving some 70% of the peripheral trench area either not blasted to adequate depth, or inadequately blasted and left with substantial obstructions and rocks so that SaiGut could not drive the sheet piles to the required depth. As a result, SaiGut was forced to redesign the temporary structure, and also to extract a number of damaged sheet piles and re-drive them. The improper blasting of the pump pit area caused a further delay in the driving of the sheet piles, and resulted in extra engineering, labor, plant, materials and other costs.

48. BVT was unable to remove one particularly large boulder at the southern end of Axis 3 of the pump pit (the "Axis 3 Boulder"), and in October 2006, BVT ceased efforts to extract it. BVT sought to transfer the consequences of the improper blasting to SaiGut, and SaiGut therefore had to spend numerous additional hours re-designing the piling to account for the Axis 3 Boulder and other

improperly blasted areas.

49. SaiGut's bid pricing for the driving of the sheet piles was based upon setting the piles at a depth of -11.5 MLLW. Driving piles to this depth would allow them to terminate below the concrete foundation slab, which would ensure stability of the sheet piles and reduce the flow of water into the structure. However, at the southeast corner of the structure, due to the Axis 3 Boulder, the piles could only be driven to a depth substantially shallower than -11.5 MLLW. As a result of the Axis 3 Boulder and other obstructions, SaiGut had to purchase and install 52 additional (longer) anchors to stabilize the structure and compensate for a collapsed trench wall at the perimeter of the pump pit, because the trench wall collapse created larger distances between the sheet piling and the excavation. An entire extra layer of support had to be added to the screening basin structure, requiring 38 tons of additional high-grade steel.

50. SaiGut's efforts to drive the piles despite the Axis 3 Boulder meant that it had to perform additional grouting work around the sheet piles to reinforce the structure and reduce the potential ingress of water, as well as to install additional grouting pipes to enable the injection of grout at the lower areas of the sheet piles. The pile driving project was scheduled to take two weeks, but lasted two months due to issues caused by BCI's defective blasting of the pump pit on behalf of BVT.

51. The excavation of the SWI basin resulted in more than 300 days of delay attributable to BVT. During that period, SaiGut's excavation equipment was allocated 100% to the basin excavation. No work could be performed until BCI finished its work on behalf of BVT; therefore, there were many days when SaiGut's excavation labor, equipment and staff were available but had to remain on standby or be put to some less efficient use. Also, BVT's improper blasting left very large pieces of rock that could not be excavated, causing damage to SaiGut's excavators and resulting in further breakdown delays. BCI also began the blasting substantially after the date specified in the Subcontract, which resulted in wasted SaiGut overhead for that period.

52. The Subcontract also obligated BVT to blast the bedrock for the bell mouths and pipes, which feed the seawater into the SWI pump house. The original plan was to blast and drill from a platform on land fill material, but BVT changed the methodology so that its subcontractor BCI

drilled instead from a floating platform directly into the bedrock. The new methodology created significantly more silt in the pump pit area than the original methodology would have caused. Under the Subcontract, SaiGut was obligated to remove any additional silt from the pump pit area. Because significantly more siltation resulted from (1) BVT's changed drilling and blasting plans and (2) the nearly one-year extended duration of the total operation, SaiGut had to perform more silt-removal work than the Subcontract anticipated.

53. The delays caused by BVT also required SaiGut to keep its construction equipment at the site longer than the parties anticipated. Under the original construction schedule, SaiGut was obligated to import its equipment into Mexico for only six months. However, because of BVT's blasting issues and other delays, SaiGut was forced to keep its equipment there longer. To avoid having to pay the high cost of permanently importing the equipment into Mexico, SaiGut had to recycle the equipment over the border from Tijuana and renew the Temporary Import License for all of the equipment. BVT should cover the costs of equipment reimportation and Temporary License renewal.

54. SaiGut also incurred damage due to post-award changes in design drawings of the SWI pump that BVT had provided to SaiGut for the basis of its bid. BVT provided SaiGut with drawings of the SWI pump during a bid conditioning meeting in late September 2005 that showed a significantly smaller pump pit structure than was shown in the Subcontract documents. SaiGut based its bid on the initial drawings of the smaller pump pit. However, BVT's drawings attached to the Subcontract show a larger structure. Basically, the dimensions represented in the second set of drawings required an extra 3,000 cubic meters of excavation work, and the purchase and installation of an additional 20 ML of sheet pilings.

55. Inaccuracies in the front-end engineering and design ("FEED") drawings, which were produced by Whessoe for ECA and provided as Rely Upon Information, also increased the scope of SaiGut's work. The drawings, which detail the requirements for water stops at construction joints on the pump pit, showed water stops only on the construction joints and external walls of the structure. The Subcontract, at section 12(c), Scope of Work, was silent as to the number and location of the water stops. During construction, however, BVT demanded water stops on both the internal and

external walls of the structure. In preparing its bid, SaiGut had allowed only for water stops on the exterior walls and between construction lifts as shown on the FEED drawings. BVT's demand for more water stops increased the total length of water stops needed by approximately 2,000 meters, and required SaiGut to perform additional installation work out-of-sequence with its original plan that extended its overall schedule.

56. The Subcontract identifies two drawings as the basis for the bid on the SWI pump pit. BVT issued additional drawings showing increased complexity of the SWI structure, and SaiGut agreed to accept the additional drawings as of April 14, 2007. Since then, BVT has demanded that further complexities be included in the SWI Structure. The newest drawings show even more complex concrete work than agreed under the Subcontract.

57. BVT's delay in providing SaiGut with detailed design drawings for the SWI structure hindered SaiGut's ability to obtain steel and fuel at prices similar to those it used in calculating its bid. SaiGut obtained quotes from its steel supplier when bidding for the SWI structure in August 2005. BVT was contractually obligated to design the SWI system. BVT released basic engineering information to SaiGut in February 2006, but it was not sufficiently detailed to permit SaiGut to order the needed steel. BVT released final approvals for its designs in May 2006. By that time, the consequences to SaiGut's purchasing costs were that steel prices had escalated by over 50% and the cost of fuel had increased by 13%. BVT's delay exposed SaiGut to extreme cost escalation exceeding any reasonable contingencies, and eliminating any opportunities for significant cost savings from an earlier procurement as planned in its schedule at time of award.

58. Construction of the SWI intake pipe basin depended upon the construction of a U-shaped bund wall into the open sea to surround and protect the construction area from the open sea during the construction of the pipe basin (the "Bund"). Under the Subcontract, SaiGut was responsible for design and construction of this temporary Bund, and BVT was to provide the necessary rock materials to SaiGut. The interior core of the Bund was to be composed of small rocks (called "core"), while the exterior was to consist of a layer of larger rocks (known as "armor"). To maintain a consistent construction schedule, it was imperative that BVT continuously supply the materials in the correct proportions of four parts core to one part armor. BVT's subcontractor BCI

failed to do so. As a result, Bund construction was delayed due to BVT's delay in delivering correctly-graded suitable materials in sufficient quantities to SaiGut.

59. Removal of the Bund also required more work than anticipated. Due to BVT's improper rock blasting and changes in blasting methodology, blasting was delayed by more than two months. Had BCI finished the blasting as scheduled, the temporary Bund could have been removed before the winter season. However, the delays required that the Bund remain in place through winter for safe protection of the work inside the basin during the bad weather season, during which time SaiGut was contractually responsible for its maintenance. To guard against a possible breach in the Bund by winter wave climate, SaiGut had to reinforce it by increasing its size and volume. SaiGut approached BVT between July and October 2006 about the need for additional materials, but BVT refused to acknowledge the need for the reinforcement. Ultimately, due to concern for safety of its personnel and the work, SaiGut took the initiative and reinforced the Bund. This was fortunate, as a severe storm in December 2006 caused the abandonment of the work, nearly breeched the reinforced Bund and caused storm damage to its integrity. Subsequently, SaiGut's work in removing the temporary Bund was more difficult and time-consuming than anticipated primarily because of the delay, the differing weather season consequences and the safety of the work. Because these consequences are entirely due to BVT's delay and default, BVT should bear the costs of removing the additional Bund reinforcement material, including costs of extra equipment needed.

60. In addition, SaiGut seeks compensation for value-added contributions it made to the anti-flotation design of the SWI Structure. The underwater nature of the SWI structure posed some threat that it could experience a flotation effect. To prevent this, BVT originally proposed installation of micro piles, but the details of the micro-piling design were uncertain and ill-defined at the bid stage. In response, SaiGut incurred certain costs in the construction and operation of a sump pumping system below the level of the floor of the SWI structure to address and rectify the flotation issue. This solution eliminated the need for BVT's micro-piles concept, and received BVT's full approval.. SaiGut's work represents a substantial cost-savings to BVT, as BVT's micro-piling concept would have cost BVT approximately $600,000. BVT has been unjustly enriched by SaiGut's sump pumping work, and should compensate SaiGut for the value of its contributions.

61. The Method Statement drawings that SaiGut submitted with its April 2005 bid showed SaiGut's need for sufficient land behind the LNG Jetty Abutment, at the start of the Approach Trestle piling operations, to set up and operate a Jetty trestle piling train. The piling train is approximately 60 meters long and is intended to be assembled on land so that it can be extended along the trestle structure as piles are driven. During subsequent SWI negotiations, SaiGut stated that the land behind the Abutment to the Approach Trestle (+11 MLLW) needed support from a retaining wall, since the land around the SWI pump pit is only +3 MLLW. However, delays caused by BVT's improper blasting caused SaiGut's construction of the retaining wall to be consequentially delayed. The land behind the Approach Trestle remained uneven and sloping for about 80 meters behind the Abutment. Because that area was not level, SaiGut had inadequate space on which to assemble its piling train. SaiGut was forced to constantly dismantle and relocate pieces of equipment that would normally be affixed to the piling train. SaiGut seeks time extension and compensation for delays and costs from BVT's failure to provide proper access to the Jetty .

62. SaiGut also incurred extra costs for the reclassification of hazardous zoning for breasting Dolphin number 2 ("BD2"). The LNG Terminal offloading platform features four motorized unloading arms for extraction of LNG from transporting vessels. Electrical equipment within a certain radius of the unloading arms must meet safety classification standards because of its location within a hazardous area in which hydrocarbons may be present. BVT represented to SaiGut that the equipment on the breasting dolphins was not required to meet the safety classification standards, as the dolphins were not within the specified radius of the unloading arms. SaiGut ordered the electrical equipment for the breasting dolphins according to this information. However, BD2 was, in fact, closer to the unloading arms than the other breasting dolphins, and the equipment on it had to meet a higher safety rating. The equipment that SaiGut ordered was thus not fit for purpose, and had to be cancelled and re-ordered at extra cost to SaiGut to conform to the requisite safety standards applicable to the actual location of BD2. SaiGut seeks to recover for this expense.

63. SaiGut has incurred costs in financing the extra work orders for all of its extra work on the SWI project, as described above, for which BVT has failed to pay.

64. SaiGut had further losses on the SWI Structure from the BAR insurance policy that

ECA obtained after award of contract; the details of which were not made privy to SaiGut at the time of bidding. The policy BVT obtained included a deductible of $500,000. In calculating its bid, SaiGut allowed for a deductible of $100,000, as had been stated in BVT's Invitation to Bid documents. Any insurance settlement that SaiGut may obtain for any given claim will thus be reduced by $500,000, not the $100,000 for which SaiGut allowed. In addition, the transportation policy's deductible is $25,000, while SaiGut anticipated a reasonable deductible of $5,000. SaiGut has submitted two insurance claims, one for sheet pile failure repair costs and another for pile coating costs. SaiGut seeks damages for the difference between the anticipated and actual insurance settlements under the insurance policies.

65. The ECA-supplied BAR insurance policy and the BVT "difference in conditions" additional insurance policy also were deficient in that they failed to address the marine character of the work, and thus did not adequately provide for the risks of working over water. The Subcontract provided that BVT would pay 0.6% of the Subcontract price to SaiGut, if SaiGut obtained extra BAR insurance. SaiGut made diligent efforts to obtain additional insurance, but was repeatedly refused additional coverage. SaiGut therefore had to self-insure for the risks of working over water in the winter season, and BVT refused to pay SaiGut the additional 0.6% of the contract price. SaiGut is entitled to be paid for the risk of self-insuring under the Subcontract terms.

66. On April 14, 2006, BVT agreed to pay SaiGut about $2,400,000 to settle certain claims for work. At that time, BVT requested, and SaiGut agreed, to transfer an additional $750,000 to the next phase of the ECA project. Plaintiffs are informed and allege that when this agreement was reached, BVT knew that it was not to be awarded a contract for the second phase of the ECA project. As such, it procured SaiGut's acceptance of the agreement without disclosing material information.

67. SaiGut has incurred $25 million in damage for the SWI claims alone. SaiGut has made diligent efforts to seek monetary compensation for the extra labor, plant and materials and extension of time without resort to litigation. SaiGut communicated its intent to reach an amicable resolution throughout the six-month period following the rejection of its initial claim, without success. SaiGut's efforts included several in-person meetings with BMVT and BVT representatives in July 2007 and January 2008, requiring SaiGut to commit time and cost for its attendance at BVT's

offices. Despite SaiGut's best efforts to realize a fair and reasonable resolution throughout the execution of its Subcontract, both BVT and ECA have refused to recognize the legitimacy of SaiGut's position and compensate SaiGut for additional time and expense necessitated by the inaccuracies in the ECA-provided Rely Upon Information and the failure of BVT to fulfill its contractual obligations.

FIRST CAUSE OF ACTION

(Negligence against All Parties)

68. Plaintiffs reallege and reincorporate by reference all paragraphs herein.

69. The Sempra Defendants assumed the responsibility to describe with technical precision the subsurface conditions where SaiGut would be required to construct the Marine Facilities, including the Jetty and the Dolphins. In so doing, the Sempra Defendants employed defendants Arup, Kleinfelder, and Whessoe (the "Consultants") to survey the LNG terminal site, measure the site's critical dimensions to competent rock, and report on their findings. The Sempra Defendants and the Consultants assumed the responsibility to evaluate the technical reports produced after such surveys and to take whatever steps were required to accurately evaluate the subsurface conditions. In doing so, each such defendant assumed a legal duty to exercise care and to meet a reasonable and accepted professional standard in performing those services.

70. The BVT Defendants also assumed the duty to describe with technical precision the seabed conditions where SaiGut would be required to construct the Marine Facilities. In so doing, the BVT Defendants employed Q&S to survey the terminal site, measure the site's subsurface dimensions where the Jetty and Dolphins would be placed by drilling piles, and report on their findings. The BVT Defendants assumed the responsibility to evaluate the Q&S Report and to take whatever steps were required to accurately evaluate the seabed conditions. In doing so, such Defendants assumed a legal duty to exercise care and to meet a reasonable and accepted professional standard.

71. The Consultants and Q&S, each in their respective ways, assumed the duty to measure, probe, drill, survey and report with technical precision on the seabed and site conditions where the Marine Works were to be constructed, and in that, each such Defendant assumed a legal

duty to exercise care in performing those services, and to meet a reasonable and accepted professional standard in performing the services.

72. Plaintiffs were within the foreseeable scope of harm that may have occurred from said Defendants' negligent performance of the activities to measure, probe, drill, survey and report on with technical precision on the seabed and site conditions where the Marine Works were to be constructed, and to evaluate said results and commission any further surveys and reports necessary to determine the seabed conditions with reasonable and professional degree of accuracy.

73. The activities to measure, probe, drill, survey and report with technical precision on the seabed and site conditions were intended to affect the Plaintiffs, as much of the information was to be provided as Rely Upon Information on which the design of Marine Facilities were to be based, and on which SaiGut was expected to base its bid. Further, it is certain both that (1) Plaintiffs suffered injury as a result of Defendants' failures to exercise due care or follow a reasonable and accepted professional standard of performance, and that (2) there is a close connection between defendants' conduct and the injury suffered by Plaintiffs.

74. There is a high degree of moral blame attached to Defendants' conduct, as each named Defendant knew that their respective work product would be relied upon in constructing the LNG Terminal, that the designed and constructed integrity of the permanent facility and safety and environmental aspects during its construction were highly dependent upon their accuracy and thoroughness, that the consequences of any negligence could be catastrophic if it were to contribute to the possible event of uncontrolled release of volatile LNG from either a tanker or the facilities, and nonetheless, as more specifically alleged herein, each such Defendant acted, at some point(s) to ignore or overlook errors, omissions, miscalculations, failures of judgment, failures of the use of care or of meeting reasonable and accepted professional standards in performing their activities. The public policy of the State of California stresses the importance of the exercise of all safety measures and reasonable care in the engineering, design, construction and commissioning of energy-supplying facilities such as LNG receiving terminals. Plaintiffs are informed and allege that Defendants' respective failures, actions and omissions are stated, in part, in paragraphs 75 through 80 below.

75. The Sempra Defendants failed in the use of reasonable care or the conformance to

reasonable and accepted professional standards, in part as follows:

a. Failed to act in accordance with Prudent Industry Practices;

b. Designated both the Thales and Kleinfelder Reports, as Rely-Upon Information, with conflicting control and tidal datum, and an absence of accurate geoid or tidal datum and no concordance;

c. Failed to obtain geotechnical measurement at each location where jetty piles or dolphin piles would be installed, despite knowing the exact geographic location coordinates of such locations as a consequence of the final re-positioning and extension of the jetty;

d. Failed to provide any reasonable opportunity in 90-day Site Inspection period during winter months to verify all data of Site Reports;

e. Failed to establish a satisfactory quality management feedback process to (i) implement Site Report recommendations, (ii) synthesize data to eliminate inconsistencies or inaccuracies, or (iii) identify and correct insufficiencies in Rely Upon Information;

f. Failed to pursue Kleinfelder's recommendation to consider further geotechnical borings, despite knowledge (i) that pile foundations would be placed at different locations than those tested to date by boreholes, (ii) that open water blasting to eliminate seabed irregularities was prohibited by the Mexican NEA, and (iii) inconsistent data in the Rely Upon Information such as an 84cm inconsistencies and vertical datum misrepresentation in levels and between MSL and MLLW data across the Kleinfelder and Thales Reports with some water depths differences of up to 4m and differences between Kleinfelder borehole depths and Thales bathymetry ranging from -3.74 m to +3.64m;

g. Failed to provide any representative and sufficient, accurate or consistent control and tidal datum, sufficient geotechnical borehole data or calibrated bathymetric or geophysical data for the Unloading Platform and its Approach Trestle;

h. Failed to provide SaiGut with 10 Site Reports issued "for information" and utilized as references by Arup in the Arup Report;

i. Designated as Rely Upon Information a feasibility survey report with only six borehole logs to show top of rock elevations over a near shore plan area of some 60,000m² for the berth, and none at all in the plan area of 2,300m² for the Approach Trestle;

j. Designated the Thales Report of 2003 as Rely Upon Information but not the Fugro Pelagos Report of 2004 which updated it;

k. Failed to pursue Kleinfelder's recommendations to further define rock elevation and quality as it related to casing length, dredge depth or subbottom boulders that may be encountered during installation;

l. Failed to supply Kleinfelder with information from Fugro Pelagos geophysical surveys of May 2004, or the subsequent Jetty design involving additional dolphins and a re-positioned jetty;

m. Failed to heed its technical advisor Arup's advice that the Kleinfelder Report was suitable only as "For Information Only," not as "Design;""

n. Failed to heed the advice of Arup that (i) the tidal datum should be that derived by Baird, that (ii) the tidal datum as used by Thales be revised to be consistent with the Baird tidal datum, or that (iii) control datum should be WGS84;

o. Failed to furnish the Fugro Pelagos Report to Kleinfelder with a request for a correlation of all data in a consistent synthesis;

p. Persevered with data of Kleinfelder Report as Rely Upon Information despite knowledge of conflicting recommendations and data from the Arup Report and subsequent reports including the 2005 Fugro S.A. geophysical and seismic report commissioned by SaiGut.

76. The BVT Defendants failed in the use of reasonable care or the conformance to reasonable and accepted professional standards, in part as follows:

a. Failed to act in accordance with Prudent Industry Practices;

b. Failed to attempt to clarify its "three primary installation areas of concern" that BVT previously identified to ECA in Appendix GG Item 129 as Kleinfelder's "recommendations," despite having commissioned a further geophysical survey by Q&S (*albeit* by inappropriate technique);

c. Failed in concluding that the "aggressive Project schedule" precluded further defining rock elevations as recommended by Kleinfelder, despite having time to commission a further geophysical survey by Q&S;

d. Failed to pursue Kleinfelder's recommendation to consider further geotechnical borings, despite knowledge (i) that pile foundations would be place at different locations than those tested to date by boreholes, (ii) that open water blasting to eliminate seabed irregularities was prohibited by the Mexican NEA, that (iii) there were vertical datum inaccuracies in levels, plus a lack of common datums across the Kleinfelder and Thales Reports, and (iv) that BVT lacked any substantial experience in managing the engineering and construction of marine works in wave-attacked exposed shorelines in hazardous metocean conditions;

e. Failed to make a sufficient review of Rely Upon information for consistency, clarity, or obvious errors or omissions for report to ECA within 28 days of Prime Contract award (cf. Prime Contract, ¶ 2.1.2);

f. Failed to give ECA notice of Excusable Delay within 14-day period, and failed to provide ECA with available and reasonable evidence thereof within 10-day period (cf. Prime Contract, ¶16.2).

g. Failed in insufficient surficial and subsurface investigation of the "nature and location of the Work and Site Conditions . . . as required by and in accordance with Prudent Industry Practices," to discover actual conditions during the 90-day Site Investigation Period (Prime Contract, ¶18.1);

h. Failed to give ECA any notice during the 90-day Site Inspection period describing any site conditions that differ materially from the descriptions in Site Reports that would impact the Work (cf. Prime Contract, ¶ 18.3);

i. Failed to provide any geotechnical borehole data or calibrated geophysical data for the

Approach Trestle areas;

j. Failed to provide SaiGut with 10 Site Reports issued "for information" and utilized as references by Arup in the Arup Report;

k. Designated as Rely Upon Information a feasibility survey report with only six borehole logs to show top of rock elevations over a near shore plan area of some 60,000m² for the berth, and none at all in the plan area of 2,300m² for the Jetty;

l. Designated the Thales and Kleinfelder Reports as Rely-Upon Information, with conflicting and inaccurate geoid and tidal datum and no concordance;

m. Failed to reasonably test Kleinfelder Report data in only commissioning Q&S for jet-probing, an unreliable technique inadequate to determine accuracy, rather than geotechnical testing at actual pile locations;

n. Failed to reasonably select or support its blasting subcontractor BCI, which had no previous under-sealevel blasting experience;

o. Failed to implement reasonable blasting procedures to facilitate rock excavation for installation of Seawater Intake pipes;

p. Failed to disclose its failure to give any Notice during the 90-day Site Inspection Period and resulting forfeiture of legal rights to assert any claim to ECA for variance in expected and actual soil condition.

77. Kleinfelder failed in the use of reasonable care or the conformance to reasonable and accepted professional standards, in part as follows:

a. Failed to survey, report or advise with Prudent Industry Practices;

b. Failed to recommend further *geotechnical* investigations, in view of extreme paucity of data obtained from test borings, and none that related to planned locations;

c. Failed to make or recommend more than six test borings overall, none of which was located within the jetty area, and those within the berthing area averaged 50+ meters from any planned dolphin piling;

d. Issued a report misleading in its statement (page 49) that "*the borings for the nearshore mooring facilities were located at proposed foundation locations and* *strength parameters were provided for each location,"* which is untrue considering the differences between the boreholes' location coordinates, the design pile coordinates and the final layout;

e. Failed to recognize that its geotechnical testing boreholes were drilled at locations different than planned locations of Dolphin pilings (on average, some 56 meters from nearest borehole to actual dolphin location);

f. Failed to create a set of accurate onshore control datum as a reference for all ground levels at site;

g. Failed to establish an accurate tidal measurement station at the site, to establish a common tidal datum;

h. Failed to identify accurate onshore control datum, consistent sea level datum and accurate tidal datum and apply consistency as basis for all bathymetric, geotechnical and geophysical surveys;

i. Failed to obtain for accurate calibration of geophysical surveys data results to water depth, sediment depth and rock depths as proven by geotechnical (coring) investigation, all to common datum;

j. Failed to identify to Sempra the distinction between marine survey data appropriate to determine feasibility and data required for detailed design and engineering of facility and its final layout, and failure to dispute use of its Report for "Rely Upon" purposes;

k. Failed to correctly report or correlate the datums and tide corrections to give correct subsurface information, such as depths to sediment, rock strata and competent rock levels, rock head profile, presence of boulders;

l. Failed to correct conflicting bathymetric MSL and MLLW datum prior to issuing Kleinfelder Report of June 4, 2004, despite timely discovery;

m. Failed to record the correlation of "sea level" on its borehole logs, thus omitting a reference standard for its tidal correction;

n. Failed to exercise due care for data in view of the highest design integrity necessary for critical hydrocarbon LNG terminal design;

o. Failed to consider sufficiently the conditions for marine contractors from environmental permit constraints, Sempra's aggressive schedule, and actual marine, metocean and subsurface conditions;

78. Arup failed, as engineering advisor, in the use of reasonable care or the conformance to reasonable and accepted professional standards, in part as follows:

a. Failed to advise or require site evaluation with Prudent Industry Practices;

b. Failed to pursue Kleinfelder's recommendation to consider further geotechnical borings if design changes placed foundations between borings, which in fact occurred;

c. Failed to establish a satisfactory quality management feedback process to (i) implement Site Report recommendations, (ii) synthesize data to eliminate inconsistencies or inaccuracies, or (iii) identify insufficiencies in Rely Upon Information;

d. Failed to require more than 6 test borings in an overall plan area of 60,000m², or at any actual piling design site, in order to obtain more reliable information on subsurface conditions;

e. Failed to circulate its discovery of Thales' and Kleinfelder's MSL and MLLW datum conflict to Kleinfelder to allow for bathymetric corrections prior to issuance of final Kleinfelder Report of June 4, 2004;

f. Failed to supply Kleinfelder with information from Fugro Pelagos geophysical surveys of May 2004;

g. Failed, after having reviewed Kleinfelder Report of November 2003, to review the revised geophysical and seismic re-evaluated sections leading to issuance of final Kleinfelder Report;

h. Failed to provide SaiGut with 10 Site Reports issued "for information" and utilized as references in the Arup Report;

i. Failed to advise any geotechnical borehole data or calibrated geophysical data for the Unloading Platform or Approach Trestle;

j. Failed to establish a common datum for geotechnical/geophysical surveys;

k. Failed to recognize inadvisability of Whessoe prescription of reverse circulation techniques on sloping subsurface terrain;

l. Failed to consider effect of Mexican NEA blasting prohibitions on risk of insufficient subsurface information and methods of design or construction;

m. Failed to prevent designation of Rely-Upon Information with conflicting sea level datum and no concordance for vertical height reconciliation;

n. Failed to correct designation of Kleinfelder Report as Rely Upon Information despite having advised in Arup Report to make it "for information only" instead.

79. Whessoe, as design engineer, failed in the use of reasonable care or the conformance to reasonable and accepted professional standards for highest integrity LNG marine structures, in part as follows:

a. Failed to design or advise by Prudent Industry Practices;

b. Failed to allow, in its prescriptive pile installation engineering selection and construction techniques, for actual site conditions at variance with Site Reports, and the constraints imposed by the prescriptive environmental permit conditions;

c. Failed to prescribe engineering criteria to allow flexibility in engineering and construction options available, e.g., in prescribing reverse circulation drilling technique on sloping subsurface terrain or seeking environmental permit exceptions to allow discrete controlled underwater blasting with curtain wall containment to protect the marine environment;;

d. Failed to allow for potentially variable rock head profile suggested by Kleinfelder Report, especially in view of blasting prohibition;

e. Failed to establish a satisfactory quality management feedback process to (i) implement Site Report recommendations, (ii) synthesize data to eliminate inconsistencies or inaccuracies, or (iii) identify insufficiencies in Rely Upon Information;

f. Failed to prescribe proper locations for testing boreholes.

80. Q&S Engineering failed in the use of reasonable care or the conformance to reasonable and accepted professional standards, in part as follows:

a. Failed to survey or advise by Prudent Industry Practices;

b. Failed by concluding, without reasonable basis, that its 2005 data was "generally consistent with the Kleinfelder data collected in 2003;"

c. Failed to adopt any standardized vertical datum thus further confusing the various measurements derived from the different sources (Thales, Kleinfelder, Fugro), or to recognize that its dolphin probing locations were remote from Kleinfelder borehole locations;

d. Failed to recognize that its measuring datum (MSL) was different than used by Kleinfelder (MLLW), or that its probing locations were remote from Kleinfelder borehole locations;

e. Failed to advise of the accuracy limitations of its GPS-guided diver hand-held jet probe technique compared to anchored-barge mounted geotechnical boring used by Kleinfelder;

f. Failed to identify the constraints of jet-probing technique to obtain accurate data in deep compacted sediment, or that dense sediment and the probe's restricted length (12 meters) or friction resistance could prevent the probe from reaching through deep compacted sediment to establish top of competent rock, or rock strata at certain dolphin locations.

81. Each of the above failures to use reasonable care and/or conform to reasonable and accepted professional standards by each Defendant was the proximate cause of damage to SaiGut.

82. Plaintiffs have been damaged by such acts of negligence in an amount to be proven at trial, but at least in the amount of $60 million U.S. dollars.

SECOND CAUSE OF ACTION

(Negligent Misrepresentation against All Defendants except Q&S)

83. Plaintiffs reallege and reincorporate by reference all paragraphs herein.

84. Defendants knew and intended that SaiGut would rely upon the information contained

in the Site Reports ordered, produced, reviewed and approved by the Sempra Defendants, the Consultants, the BVT Defendants, and Q&S in that much of the information was to be provided as Rely-Upon Information for the design of Marine Facilities, on which SaiGut was expected to base its bid. In fact, Sempra Energy, ECA, BMVT and BVT did provide the information for the express purpose of allowing contractors to estimate the costs of construction, formulate a "critical path" construction plan, and submit a bid for the Subcontract. Defendants intended to induce SaiGut and others to act in reliance on such information, evidently from the contract provision that contractors may "rely upon the accuracy of the information without further verification."

85. Plaintiffs are informed and allege that defendants knew and intended that SaiGut would use and rely upon the drawings, specifications, and plans provided by ECA, BMVT, and BVT during the Invitation to Bid in preparing its bid.

86. The Rely-Upon Information, including the Kleinfelder and Thales Reports, did not accurately represent the conditions at the site where the Marine Facilities were to be built. Rather, as set forth above, the Rely-Upon Information contained numerous material inaccuracies, particularly with respect to measurement datums, bathymetry and subsurface rock levels and quality. Also, drawings, specifications, and plans provided by ECA, BMVT, and BVT during the Invitation to Bid and Subcontract negotiation contained material inaccuracies or omissions on the SWI scope of work.

87. SaiGut justifiably relied upon the Rely-Upon Information, including but not limited to the Kleinfelder Report, as well as upon other drawings, specifications, and plans provided by ECA, BMVT, and BVT during the Invitation to Bid and negotiation of the Subcontract, in preparing its bid for the Marine Facilities.

88. When Defendants ordered, produced, reviewed, approved, and supplied the inaccurate information to SaiGut, they had no reasonable basis for believing the information to be true. By providing the inaccurate information, Defendants misrepresented the nature of the subsurface conditions where the Marine Facilities were to be located, and the scope of work necessary to complete the SWI structure.

89. At the time of Defendants' misrepresentations, SaiGut was ignorant of the actual jobsite conditions and scope of work. Knowledge of the actual jobsite conditions and scope of work

would have changed the design, procurement, and construction elements of SaiGut's bid, and would have increased SaiGut's estimates of the timeframe for construction and costs of labor, plant and materials. Knowledge of the actual conditions and scope of work also would have altered SaiGut's "critical path" formulation and final bid for the Subcontract.

90. As a direct and proximate result of defendants' negligent misrepresentations, including the inaccuracies in the Rely-Upon Information and other drawings, specifications, and plans provided to SaiGut for use in preparing its bid for the Marine Facilities, Plaintiffs have been and will suffer damages in an amount to be proven at trial, but at least in the amount of $60 million.

THIRD CAUSE OF ACTION

(Breach of Implied Warranty of Information against All Defendants)

91. Plaintiffs reallege and reincorporate by reference all paragraphs herein.

92. As a matter of law, the Sempra Defendants had an obligation to provide BVT with plans and specifications that were adequate, complete and sufficient to allow BVT to design and build the Marine Facilities and the SWI structure. When ECA accepted BVT's bid and awarded it the Prime Contract, ECA impliedly warranted the adequacy of the plans, specifications, drawings and Rely-Upon Information for purposes of reasonably bidding for and performing design and build of the Marine Facilities. Likewise, BVT had an obligation to provide plans and specifications that were adequate, complete and sufficient to allow SaiGut to construct the Marine Facilities and SWI structure as intended when the bid was offered. When BVT accepted SaiGut's bid and awarded it the Subcontract, BVT impliedly warranted the adequacy of the plans, specifications, drawings and Rely Upon Information for purposes of reasonably bidding and performing construction of the Marine Facilities and SWI structure.

93. SaiGut was, in fact, misled by ECA and BVT to its detriment when preparing and submitting its bid by their provision of inaccurate, incomplete and inadequate plans and specifications. Moreover, both ECA and BVT failed to timely remedy the defective Rely-Upon Information, constituting material and significant breaches of the implied warranty of the adequacy of the plans and specifications.

94. As a direct and proximate result of defendants' breach of implied warranty of

adequacy of the Rely-Upon Information, Plaintiffs have been and will suffer damages in an amount to be proven at trial, but at least in the amount of $60 million.

FOURTH CAUSE OF ACTION

(Breach of Duty of Non-Hindrance against the BVT Defendants)

95. Plaintiffs reallege and reincorporate by reference all paragraphs herein.

96. Implied in the Subcontract between BVT and SaiGut is the duty to cooperate and the promise that the BVT Defendants and their agents would not act or fail to act in any manner to hinder, delay, or interfere with SaiGut in the prosecution of its work on the Marine Facilities.

97. The BVT Defendants and their agents also expressly owed Plaintiffs a duty of cooperation and non-hindrance under the terms of the Subcontract.

98. The BVT Defendants breached their duties of cooperation and non-hindrance by failure to properly administer the Subcontract; to provide access to the project at times and in states of completeness as specified in the plans, drawings, specifications and the related Subcontract documents; by delaying in considering and granting change orders, extra work orders, and reasonable requests for time extensions; by the active interference by the BVT Defendants and their subcontractors and agents with SaiGut's ability to perform work in a timely manner in accordance with the terms of the Subcontract and related documents, or failures on their part to adequately perform their obligations as specified in the Subcontract; by failing to timely issue project drawings and plans and to timely remedy defects therein; by failing to provide accurate and complete Rely Upon Information and to timely remedy defects therein; by failing to properly or timely respond to SaiGut's requests for equitable adjustment, or reasonably advocate on SaiGut's behalf with respect to those claims, as stated in the Subcontract.

99. As a direct and proximate result of defendants' breaches of this duty, Plaintiffs are entitled to recover damages at least in the amount of $60 million and to receive an extension of time under the Subcontract.

FIFTH CAUSE OF ACTION

(Breach of Contract against the BVT Defendants)

100. Plaintiffs reallege and incorporate by reference all paragraphs herein.

101. Under the terms of the Subcontract and by providing the Rely Upon Information and authoring and preparing other drawings, plans and specifications, the BVT Defendants represented and warranted to SaiGut the following:

a. That the plans, drawings, specifications and Rely-Upon Information provided by the BVT Defendants were suitable, accurate, adequate and complete and, if followed, SaiGut could accomplish an acceptable result within the time specified by the contract;

b. That the BVT Defendants and their agents would neither hinder, delay, nor unreasonably interfere with SaiGut's work, would arrange and coordinate the work of other contractors working on the Marine Facilities project so as to avoid any delay being imposed upon SaiGut in the completion of its work, and would keep the work in a state of forwardness so as to enable SaiGut to perform its work within the required time and in accordance with the budget upon which SaiGut submitted its bid for the Subcontract;

c. That the BVT Defendants, in the administration of the Subcontract, would promptly acknowledge and reasonably compensate SaiGut for additional or extra work and grant in a prompt and prudent fashion extensions of time as required by SaiGut in the event of design changes, coordination problems, delays attributable to the BVT Defendants or their agents, or other compensable changes for which appropriate extensions of time would customarily be granted; and

d. That the BVT Defendants would staff the Marine Facilities project with competent, professional, and experienced management capable of understanding BVT's responsibilities with respect to the Marine Facilities project and consistent with the plans, drawings, and specifications and other Rely Upon Information according to which the project was to be performed.

102. SaiGut reasonably relied on, among other things, the express and implied warranties and representations set forth above, and the accuracy of the Rely-Upon Information as provided, and based both its bid and its performance in reliance thereon.

103. Throughout SaiGut's work on the Marine Facilities, the BVT Defendants made many significant and repeated changes in the design and work from that reflected in the Subcontract documents, which required SaiGut to supply labor, materials, equipment, supplies and overhead items well beyond that contemplated at the execution of the Subcontract. The BVT Defendants failed and

refused to recognize and promptly respond to such changes and, ultimately, to properly price and pay for the changes as required by the Subcontract.

104. The BVT Defendants breached the express and implied obligations under the Subcontract by its actions and/or inactions, including but not limited to the following:

a. Providing defective or inadequate information, plans, specifications, and geotechnical reports as information "to be relied upon without further verification;"

b. Requiring changed and extra work without justly compensating SaiGut and properly extending the contract time within which to complete the work;

c. Interfering with, disrupting and delaying SaiGut's progress by its actions or failures to act, or as a result of delays or inadequate or improper performance of work that was the responsibility of BVT under the Subcontract;

d. Failing to timely provide the design documents and drawings and failing to provide compensation for the changed work and delays resulting therefrom;

e. Failing to timely respond to or take proper action on requests for information, submittals, proposed change requests and extra work orders, and requests for equitable adjustment;

f. Requiring SaiGut to perform extra work, which delayed the completion of the work under the Subcontract without granting appropriate time extensions or compensating SaiGut for its increased overhead, supervisor and engineer time, and other costs incurred as a result of such delays;

g. Providing inadequate project management, administration, and communication on the Marine Facilities project;

h. Requiring directly or constructively the acceleration of SaiGut's works by, among other things, demanding that the work be completed as soon as possible, without further compensation or time, and by threatening to hold SaiGut liable for delay damages, liquidated damages, or additional costs if the schedule was not met;

i. Failing to coordinate the work of other contractors and entities;

j. Hiring a blasting subcontractor that was unable to properly carry out the blasting of the area designated for the SWI pump pit as provided in the Subcontract leading to numerous instances of delay and extra labor and expense;

k. Failing to compensate SaiGut's additional work or extend its time due to the defective and inaccurate Rely Upon Information;

l. Failing to provide compensation for SaiGut's additional work or changed scope of work resulting from differing site conditions encountered on the project.

m. Failing to notify SaiGut of the actual terms and conditions of its insurances, causing extra effort and cost to SaiGut in establishing its insurance exposure by virtue of the revised deductible provisions to actual claims.

These changes and differing conditions were unanticipated, unforeseen, and undisclosed by a reasonable reading of the Rely-Upon Information, plans, drawings and specifications and other Subcontract documents. The changes and differing conditions were not within the parties' contemplation when they entered the Subcontract, but materially and cardinally delayed the time of completion and the cost of performance, and resulted in productivity losses, equipment standby and breakdown, idle manpower and extended plant and jobsite, procurement of additional materials, extra labor and engineering, and additional overhead, and other costs.

105. SaiGut has done its utmost to mitigate its damages, and in that effort SaiGut has expended substantial amounts of its own funds and time in order to complete the construction of the Marine Facilities and SWI structure despite the defective Rely Upon Information and other failures of the BVT Defendants.

106. As a result of BVT's breaches and misrepresentations at the time of bid and at Subcontract execution, SaiGut was required to perform work clearly not contemplated by the Subcontract, and of a different nature and character than provided for therein. SaiGut's performance was also materially hindered, delayed and disrupted by BVT's failure to perform as agreed, thereby causing SaiGut to incur significant additional costs with respect to performance of its obligations under the Subcontract.

107. By reason of the foregoing, Plaintiffs are entitled to recover damages in the sum of at least in the amount of $60 million, together with amounts representing all remaining billed and unpaid subcontract work and retainage held and not yet paid, together with interest thereon at the highest applicable rate, and to an extension of time.

108. Despite Plaintiffs' timely demand therefor, the BVT Defendants have failed, refused and neglected to pay said sums, or any portion thereof, or to grant such extension of time.

109. Pursuant to Section 553.54.3 of the Subcontract , Plaintiffs are is also entitled to an award of their reasonable attorneys fees incurred arising from the Subcontract.

SIXTH CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith, Fair Dealing against BVT Defendants)

110. Plaintiffs reallege and reincorporate by reference all paragraphs herein.

111. By operation of law, the BVT Defendants owe SaiGut a duty of good faith and fair dealing in connection with BVT's performance of the Subcontract such that SaiGut could fulfill its contractual obligations, and enjoy the benefits of its bargain;

112. Said BVT Defendants have significantly and materially breached the covenant of good faith and fair dealing, to SaiGut's detriment, by conduct including, but not limited to, the BVT Defendants' failure to provide complete and accurate Rely Upon Information; failure to provide accurate drawings upon which SaiGut could base its bid; failure to adhere to the design specifications and work methodologies as set forth in the Subcontract documents; failure to compensate SaiGut for additional work as directed by BVT; failure to timely respond to and/or take proper action with respect to requests for information, proposed change requests and requests for extra time or extra work orders or other equitable adjustment; and the BVT Defendants' advertising the Subcontract for bids and proceeding to execute the Subcontract knowing that the designs, drawings, plans and Rely Upon Information were (and are) defective, incomplete, and inaccurate.

113. As a direct, proximate, and foreseeable result of the BVT Defendants' breaches of the covenant of good faith and fair dealing, Plaintiffs are entitled to an extension of time, and to recover damages of at least $60 million, together with interest at the highest statutory rate from the dates due until paid, and its attorneys fees incurred herein.

SEVENTH CAUSE OF ACTION

(Fraud against the BVT Defendants)

114. Plaintiffs reallege and reincorporate by reference all paragraphs herein.

115. Pursuant to Section 18.1 of the Prime Contract, BVT agreed that, within 90 days, it

"shall ... investigate the Site Conditions and become familiar with, and satisfy itself with respect to, the nature and location of the Work and Site Conditions at the Site . . . in accordance with Prudent Industry Practices." Section 18.1 provided that, after expiration of the 90 day period, BVT "shall be deemed to have obtained all necessary information as to risks, contingencies, and all other circumstances that may influence or affect the Work, including all subsurface conditions except as set forth in Section 18.3."

116. Under Section 18.3 of the Prime Contract, ECA would retain the risk of "Unforeseen Site Conditions," defined as any Site Conditions that (a) BVT discovered during the 90-day Site Investigation Period; that (b) BVT described in reasonable detail in a Notice to ECA during that Period; and that (c) differed materially from the descriptions of the Site Conditions in the Site Reports. Failing any such Notice, BVT agreed to accept the risk of any variance between the expected and actual site conditions.

117. Plaintiffs are informed and allege that BVT's sole effort to investigate the Site's ocean floor as required by Section 18.1 was to obtain the Q&S Report, but its jet-probing technique is known to be inadequate, especially in dense sands, to confirm geotechnical data, as Q&S purported to do. BVT rejected the recommendations of Kleinfelder and Arup for further geotechnical testing. After this weak effort, BVT gave no notice to ECA during the 90-day Period of any differing Site Conditions, and thus accepted the entire risk of unforeseen Site Conditions under Section 18.1. At no time did BVT disclose these material facts to SaiGut prior to the Subcontract.

118. Plaintiffs are informed and allege that the BVT Defendants attempted to fraudulently pass on to SaiGut the risk of differing Site Conditions that it had previously assumed from ECA. To this end, they unilaterally prepared "minutes" from a Bid Conditioning Meeting with SaiGut in April 2005 falsely suggesting that SaiGut had agreed there would be "no rely-upon data on soil and subsurface conditions," and had unconditionally agreed to accept full risk of any variance between expected and actual soil conditions, pile lengths and geotechnical data. The BVT Defendants knew or should have known the "minutes" were false because SaiGut never made any such "unconditional" promise, nor indicated that it had not relied on the "Rely Upon Information," nor stated any willingness to accept the risk of subsurface conditions without a corresponding "pass-thru" right to

obtain compensation from ECA through BVT. The BVT Defendants had repeatedly represented to SaiGut that, upon any variance in actual conditions from expected "Rely Upon" conditions, BVT could assist it to obtain compensation from ECA on a "pass-thru" basis. BVT knew or should have known that its assurances were misleading, since BVT had already accepted the site conditions risk under the Prime Contract, and thus had no legal right to make such a pass-thru claim to ECA. The BVT Defendants failed, however, to disclose this fact to SaiGut prior to the Subcontract, and for three years sequestered from SaiGut the Prime Contract's provision by which BVT had accepted such risk.

119. Moreover, said "minutes" directly conflict with the language of the Subcontract signed in July 2005. Section 553.50.2 allocates only limited risk to SaiGut, stating that SaiGut "has satisfied itself as to the character . . . of surface and subsurface conditions . . . ***insofar as this information is reasonably ascertainable from an inspection of the Jobsite and Subcontract Documents***." (*ital. added)*. Thus, SaiGut accepted the risk only of Site Conditions "reasonably ascertainable from an inspection."

120. Further, the Subcontract also reflects SaiGut's reliance on "Rely Upon Information, and its expectation of a "pass-thru" right to recoup any costs incurred due to Unforeseen Site Conditions. Early drafts demonstrate SaiGut's pass-thru expectation as SaiGut drafted a "pass-thru clause" for addition to a BVT draft that lacked such a provision, and BVT then included a modified pass-thru clause which appeared to fulfill its earlier assurances to SaiGut. The final Subcontract states the requirement that SaiGut based its bid on the Rely-Upon Information and states BVT's promise that, in case SaiGut encountered any variances from the Rely-Upon Information, the BVT Defendants would support and assist SaiGut in presenting and negotiating with ECA any "pass-thru" claims for such changes.

121. In entering the Subcontract, SaiGut relied on the BVT Defendants' representations and assurances that BVT could present a pass-thru claim to ECA for compensation for extra costs SaiGut may incur, or for extension of time required, resulting from any variance from conditions indicated by Rely Upon Information. But the BVT Defendants failed to inform Plaintiffs that they had effectively waived any pass-thru rights against ECA by allowing the 90-day Site Investigation Period to lapse without giving any Notice of differing conditions. Instead, the BVT Defendants concealed the actual

facts by sequestering the Prime Contract, by delaying by 6 months the presentation to ECA of SaiGut's October 2005 claim, by discouraging SaiGut from making a request for additional time on the claim of "different critical path," and other devices. The BVT Defendants knew or should have known that its assurances to SaiGut were misleading, since they BVT knew that BVT had thus contractually forfeited any pass-thru claim rights against ECA. BVT knew that these material facts were not known to SaiGut, and that they could not be discovered by SaiGut before execution of the Subcontract. The BVT Defendants failed to disclose these material facts and/or concealed the same, despite BVT's duty to disclose them to SaiGut.

122. Further, as alleged above, on April 14, 2006, BVT requested, and SaiGut agreed, to transfer an additional $750,000 to the "next phase" of the ECA project for which contracts had yet to be awarded but which BVT suggested it was likely to again be prime contractor. Plaintiffs are informed and allege that, when these assertions were made, the BVT Defendants knew or had reason to know that BVT was not to be awarded a contract for the second phase of the ECA project. As such, it procured SaiGut's acceptance of the agreement without disclosing material information.

123. Plaintiffs are informed and allege that the BVT Defendants failed to disclose these material facts with the intent to induce SaiGut to enter into the Subcontract, to fraudulently transfer the Site Conditions risk to SaiGut, and to induce SaiGut to agree to a very substantial liquidated damages provision for delay (to $200,000 per day), again on the expectation that any delay caused by differing Site Conditions would be compensable by the pass-thru procedure promised by BVT. Due to BVT's failure to disclose its inability to claim against ECA for site conditions, SaiGut was unaware of the true material facts upon entering the Subcontract.

124. Justifiably relying upon the BVT Defendants' said assurances and failures to disclose, SaiGut entered into the Subcontract in reliance on its stated limitations on risk of Unforeseen Conditions and its provision for a pass-thru procedure for site conditions variance claims. SaiGut also entered into the Subcontract with the reasonable belief that its substantial liquidated damages provision would apply to delay within SaiGut's control, not to delay beyond SaiGut's control caused by Site Conditions differing from Rely Upon Information supplied by BVT and Sempra, due to the compensation procedure for pass-thru claims promised by BVT. The facts that BVT intentionally

misrepresented and/or not disclosed to SaiGut were material to its decision to enter into the Subcontract with its provisions described above.

125. As a direct and proximate result of the BVT Defendants' misrepresentations and omissions, Plaintiffs have suffered, and will suffer damages. Plaintiffs are entitled to damages to compensate for loss caused by its reliance upon the BVT Defendants' assurances of "pass-thru" rights, and to rescission or other relief from any BVT claim to liquidated damages.

126. Plaintiffs are informed, believe, and allege that the aforementioned conduct of the BVT Defendants was oppressive, malicious, fraudulent, and deceitful, done with the intention of depriving Plaintiffs of their rights and/or otherwise causing injury to Plaintiffs, and was despicable conduct that subjected Plaintiffs to a cruel and unjust hardship in conscious disregard of Plaintiffs' rights, and justifies an award of exemplary and punitive damages.

EIGHTH CAUSE OF ACTION

(Cardinal Change/*Quantum Meruit*: the Sempra and BVT Defendants)

127. Plaintiffs reallege and reincorporate by reference all paragraphs herein.

128. The differing site conditions and unforeseen conditions encountered on the project by SaiGut and the misrepresentations and breaches of warranty imposed upon SaiGut by the BVT and Sempra Defendants resulted in SaiGut being forced to perform duties that were drastically different in character, scope, and cost than those of the Subcontract on which it bid, bargained for, and executed in writing with BVT.

129. As a result, the construction work performed by SaiGut on the Marine Facilities and SWI structure, at the direction of BVT, was substantially more onerous, difficult and costly to perform than the work reasonably contemplated by the parties under the Subcontract, which work was not within the scope of SaiGut's work under the Subcontract, and which exceeded the scope of the change provisions of the Subcontract.

130. The design changes required in order to physically construct the pile foundations and the SWI structure, coupled with BVT's other material contractual breaches, mismanagement, and lack of coordination were different than that which Plaintiffs or any bidder could have anticipated. As a result, Plaintiffs are entitled to recover the reasonable value of all labor, equipment, materials,

and services performed on a cardinal change/*quantum meruit* basis according to proof but at least $60 million, with interest at the highest applicable rate, and its attorney's fees incurred.

NINTH CAUSE OF ACTION

(Mutual Mistake against BVT Defendants)

131. Plaintiffs reallege and reincorporate by reference all paragraphs herein.

132. At the time of the award and execution of the Subcontract, both Plaintiffs and the BVT Defendants were mistaken in their beliefs regarding the nature of the subsurface conditions, including the rock head profile, depth to competent rock and related facts essential to the timely and efficient completion of the Marine Facilities and SWI project and the effectiveness of the design. Their mutual mistake was fundamental to the basic assumptions upon which the Subcontract was made and materially affected the benefit of the bargain. The Subcontract as executed did not place the risk of this mistake on Plaintiffs.

133. As a result of the mutual mistake of the parties, Plaintiffs have been materially damaged and the BVT Defendants have been unjustly enriched from SaiGut's performance.

134. Plaintiffs are therefore entitled to have the Subcontract reformed to the extent necessary to account for the parties' mistake and to conform the agreement to the parties' reasonable expectations. Plaintiffs are also entitled to the reasonable value of its services rendered, and the reasonable value of goods and materials incorporated in the Marine Facilities and SWI project, less the reasonable value of BVT's previous payments to SaiGut, in an amount according to proof but at least $60 million, together with interest at the highest applicable rate, and its attorney's fees incurred.

TENTH CAUSE OF ACTION

(*Quantum Meruit*: Reasonable Value of Work – the Sempra and BVT Defendants)

135. Plaintiffs reallege and reincorporate by reference all paragraphs herein.

136. As an alternative claim for relief, SaiGut alleges that from May 2005 to the present, SaiGut has, at the request of the BVT and Sempra Defendants, furnished services, labor, plant, material, and equipment in the course of performing its obligations under the Subcontract, all of which were incorporated into the project for the benefit of the BVT and Sempra Defendants. For construction work through the date hereof, the actual and reasonable value of labor, material, and

equipment furnished by SaiGut and used and incorporated in the Marine Facilities project greatly exceeds the contractual limits. The amount claimed has been set forth in detail in the foregoing paragraphs of this Complaint. Plaintiffs will seek to amend its claim for the additional value of services, labor, materials and equipment furnished by SaiGut for construction work and used and incorporated in the Marine Facilities project not reflected in the foregoing paragraphs.

137. The services, labor, materials, and equipment were actually used for the benefit of the BVT and Sempra Defendants.

138. The amount, type and quantity of the engineering, procurement and construction services, labor, materials and equipment provided by SaiGut and used in the construction of the Marine Facilities was reasonable.

139. The net unpaid amount is the actual and reasonable net value of the construction services, labor, materials and equipment provided to the BVT and Sempra Defendants for which Plaintiffs have not received payment in connection with the project. Despite demands, this amount has not been paid and remains due and owing plus SaiGut's costs and additional amounts to be proved at trial. As an alternative claim for relief, Plaintiffs are entitled to recover, on the equitable basis of *quantum meruit*, and to avoid unjust enrichment, an amount according to proof but at least $60 million, together with interest at the highest applicable rate, and its attorney's fees incurred.

ELEVENTH CAUSE OF ACTION

(Constructive Acceleration against the BVT Defendants)

140. Plaintiffs reallege and reincorporate all paragraphs herein.

141. As a result of the inaccurate Rely Upon Information furnished by BVT, the BVT Defendants' failures to follow Prudent Industry Practices, and their failures to commission a further geotechnical survey despite knowledge of need therefor, to provide any geotechnical or calibrated geophysical data for the Jetty area, to reasonably select its blasting subcontractor, and BVT's other delays and omissions, SaiGut experienced delays in completing its work that were excusable due to such delays and events being attributable to causes beyond SaiGut's control.

142. The BVT Defendants had knowledge of these excusable delays as demonstrated by timely notices of the delays and SaiGut's proper request for a time extension.

143. As alleged, SaiGut's requests of October 2005, May 23, 2007 and November 7, 2007, seeking both monetary compensation and extension of time for excusable and compensable delay, were rejected both by the BVT and Sempra Defendants on June 13, 2007 and on December 18, 2007.

144. An order to accelerate was effectively and constructively made by BVT and ECA through their refusals to grant any extension of time or monetary compensation for delays incurred solely due to BVT and others' delay and omissions, but without SaiGut's fault.

145. Plaintiffs did, through great efforts and very substantial expenditures, effectively accelerate SaiGut's efforts to complete its Work on the Marine Facilities and Seawater Intake structure, and Plaintiffs are entitled to recover such expenditures in such acceleration.

146. As a direct, proximate, and foreseeable result of SaiGut's constructive acceleration, SaiGut is entitled to an extension of time and Plaintiffs may recover damages of at least $60 million, together with interest at the highest applicable rate, and its attorneys fees incurred herein.

TWELFTH CAUSE OF ACTION

(Injunctive Relief against the BVT Defendants)

147. Plaintiffs reallege and reincorporate all paragraphs herein.

148. Pursuant to Section 551.2 of the Subcontract, SaiGut was required to furnish to BVT, among other things, the following security instruments:

a. For the Performance Security Package, an irrevocable Letter of Credit in amount at least equal to 15% of the Subcontract Price;

b. For the Initial Milestone Payment Security Package, an irrevocable Letter of Credit in an amount at least equal to 8% of the Subcontract Price; and

c. For Retention, an irrevocable Letter of Credit calculated in four steps: (i) 2% of the total Subcontract Price to be issued within 14 days from the execution of the Subcontract; (ii) thereafter increasing the Retention Letter of Credit by 1.5% (cumulative total of 3.5%) of the total Subcontract Price after the 6th month from Subcontract execution; (iii) Thereafter increasing the Retention Letter of Credit by 2% (cumulative total of 5.5%) of the total Subcontract Price after the 12th month from Subcontract execution; and (iv) thereafter increasing the Retention Letter of Credit by 1.5% (cumulative total of 7%) of the total

Subcontract Price after the 16th month from the Subcontract execution.

149. Also pursuant to Section 551.2 of the Subcontract, SaiGut was required to furnish to BVT a Parent Company Guarantee upon execution of the Subcontract. Accordingly, on or about December 21, 2006, Saipem, as sole owner of SaiGut, issued a Parent Company Guarantee in favor of BVT whereby Saipem guaranteed the "punctual true and faithful performance and observance by [SaiGut] of its obligations under or in accordance with" the Subcontract, and "shall of its own expense perform or take whatever steps may be necessary to procure performance of the obligations of [SaiGut] under the Subcontract when such obligation is due or payable …." The effective date of the Parent Company Guarantee was May 13, 2005.

150. In accordance with its contractual obligations, Saipem instructed Banco Nacional de Mexico, S.A. ("Banamex") to issue, and Banamex did issue, the following irrevocable Standby Letters of Credit (collectively, the "Letters of Credit") in favor of BVT, all of which are remain outstanding:

a. Standby Letter of Credit P400669 in the amount of $618,528.00;

b. Standby Letter of Credit P400670 in the amount of $646,056.00;

c. Standby Letter of Credit P400671 in the amount of $926,704.00;

d. Standby Letter of Credit P404954 in the amount of $214,780.00;

e. Standby Letter of Credit P404955 in the amount of $161,085.00;

f. Standby Letter of Credit P404956 in the amount of $161,085.00;

g. Standby Letter of Credit P404957 in the amount of $429,560.00;

h. Standby Letter of Credit P404958 in the amount of $1,610,850.00;

i. Standby Letter of Credit P404959 in the amount of $214,780.00;

j. Standby Letter of Credit P111636 in the amount of $1,718,240.00;

k. Standby Letter of Credit P111637 in the amount of $815,632.00;

l. Standby Letter of Credit P111638 in the amount of $6,443,400.00;

151. Under their vague terms, the Letters of Credit purport to allow BVT to draw upon presentation of a sight draft with a certificate signed by BVT that it notified SaiGut at least five days prior to the date of the drawing that SaiGut has failed to (a) discharge its obligations under the

Subcontract; and (b) to take prompt and adequate steps to comply with BVT's demands, and thus intends to draw upon the Letters of Credit.

152. The Subcontract provides at Section 551.6 for liquidated damages in the event that SaiGut fails to comply with the schedule and/or the performance requirements of the Subcontract.

153. Plaintiffs here assert claims relating to Jetty and Dolphin pile foundations arising from certain defective Rely Upon Information in Site Reports that the Sempra Defendants provided with the Invitation to Bid documents about subsurface marine conditions, which, in turn, was provided by BVT to SaiGut pursuant to the Subcontract. The actual site conditions differed substantially from the data presented in the Rely-Upon Information, which greatly impacted both SaiGut's complexity of performance and its construction schedule and costs. SaiGut was forced to exceed its bid allowances and expend significant additional resources on labor, equipment, and materials due to extra work necessitated by unforeseen subsurface conditions. This also resulted in delay in performance by SaiGut which, due to BVT's refusals to grant a time extension, amounts to constructive acceleration in SaiGut's favor that would deny BVT any right to draw on the Letters of Credit.

154. Plaintiffs are informed and allege that the BVT Defendants have threatened and are taking steps with Banamex to draw down on the Letters of Credit asserting ill-defined purported failures to "discharge its obligations" or "take prompt and adequate steps to comply with BVT's demands" in order to gain an unfair advantage prior to final determination of issues in this litigation. However, as stated above, any failure in SaiGut's performance was due to the BVT Defendants' own failure to provide accurate Rely-Upon Information to SaiGut, or BVT's own delays and improprieties, and thus the BVT Defendants are not entitled to draw down on the Letters of Credit.

155. The BVT Defendants' threatened wrongful conduct, unless and until enjoined and restrained by order of this Court, will cause great and irreparable injury to Saipem in that Saipem will be left without recourse in the event that BVT improperly draws down on the Letters of Credit from Banamex. Plaintiffs are informed and allege that the vague terms of the Letter of Credit allow an opportunity for material fraud in attempting to draw upon them on grounds of failure to "discharge obligations" or "take prompt and adequate steps to comply with BVT's demands." BVT is also a thinly-capitalized, single-purpose entity without the ability to respond to any judgment for damages.

Saipem has no adequate remedy at law for the injuries threatened, as Saipem would otherwise be forced to institute a multiplicity of suits to obtain adequate compensation for its injuries.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all causes of action alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek judgment against defendants as follows:

1. On the First Cause of Action, judgment against all Defendants equal to Plaintiffs' damages as determined at trial, at least the sum of $60 million.

2. On the Second Cause of Action, judgment against the BVT and Sempra Defendants, Arup, Kleinfelder and Whessoe for Plaintiffs' damages for their negligent misrepresentation, for at least $60 million.

3. On the Third Cause of Action, judgment against all Defendants for Plaintiffs' damages proximately caused by their breach of the implied warranty of adequacy of Rely-Upon Information, at least for $60 million.

4. On the Fourth Cause of Action, judgment against the BVT Defendants in an amount equal to Plaintiffs' damages proximately caused by said BVT Defendants' breach of the duty of non-hindrance in an amount of at least $60 million.

5. On the Fifth Cause of Action:

(a) Judgment against the BVT Defendants in an amount equal to Plaintiffs' damages as alleged herein proximately caused by said BVT Defendants' breach of contract in an amount proven at trial, at least for $60 million; and

(b) Judgment against the BVT Defendants awarding SaiGut an extension of time to complete the Marine Works and SWI structure under the Subcontract as required by delays of said BVT Defendants; and

(c) For an award of reasonable attorneys' fees pursuant to Section 553.54.3 of the Subcontract.

6. On the Sixth Cause of Action, judgment against the BVT Defendants equal to Plaintiffs' damages alleged herein proximately caused by the BVT Defendants' breach of the implied

covenant of good faith and fair dealing for amount determined at trial, but at least $60 million.

7. On the Seventh Cause of Action:

(a) Judgment against the BVT Defendants in an amount equal to Plaintiffs' damages as alleged herein proximately caused by their fraud in an amount to be determined at trial;

(b) Rescission or other appropriate equitable relief to cancel and set aside the Subcontract and all rights and advantages gained by the BVT Defendants that they forced upon Plaintiffs through deceit and duress; and

(c) Punitive damages in such amount as the Court or jury may award.

8. On the Eighth Cause of Action, judgment against the Sempra and BVT Defendants for cardinal change/*quantum meruit* as alleged herein in an amount to be determined at trial.

9. On the Ninth Cause of Action:

(a) Judgment against the Sempra and BVT Defendants in an amount equal to the reasonable value of services rendered by SaiGut, and the reasonable value of goods and materials incorporated in the Marine Facilities and SWI structure, less the value of said Defendants' previous payments to SaiGut, in an amount to be determined at trial;

(b) Reformation of the Subcontract to the extent necessary to account for the parties' mistake and to conform the agreement to the parties' reasonable expectations.

10. On the Tenth Cause of Action, judgment against the Sempra and BVT Defendants for *quantum meruit*/reasonable value of construction work performed, in an amount to be determined at trial.

11. On the Eleventh Cause of Action, judgment awarding SaiGut an extension of time to complete the Marine Works and SWI facilities as required by delays due to causes over which SaiGut had no control and by the BVT Defendants' refusals to extend time, and awarding Plaintiffs their damages incurred, in an amount of at least $60 million, plus interest and attorneys' fees.

12. On the Twelfth Cause of Action:

(a) For an order requiring the BVT Defendants to show cause, if any, why they should not be enjoined as set forth herein, during the pendency of this action; and

(b) For injunctive relief, temporary and permanent, enjoining the BVT Defendants, and their agents, servants, and employees, and all persons acting in concert with or for it from seeking to draw upon any of the Letters of Credit.

13. On all Causes of Action:

(a) For interest on all damages at the legal rate according to proof;

(b) For the costs of suit incurred herein;

(c) For reasonable attorneys' fees

For such other and further relief that the Court may deem just and proper.

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP

Dated: March 14, 2008

By: [signature]

Robert Ted Parker
Raymond E. Loughrey
Kara V. Warner

Attorneys for Plaintiffs

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

148779 - SR

March 14, 2008
13:26:17

Civ Fil Non-Pris
USAO #.: 08CV0478 CIV. FIL.
Judge..: JEFFREY T MILLER
Amount.: $350.00 CK
Check#.: BC#12205

Total-> $350.00

FROM: SAIGUT V. SEMPRA ENERGY
CIVIL FILING

ORIGINAL

BY FAX

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

FILED
MAR 1 4 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SAIGUT S.A. de C.V., a Mexican corporation; and SAIPEM S.A., a French corporation,

(b) County of Residence of First Listed Plaintiff N/A (Mexico)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Robert Ted Parker (SBN 43024), Kirkpatrick & Lockhart Preston Gates Ellis LLP, 55 Second Street, Suite 1700, San Francisco, CA 94105

DEFENDANTS

SEMPRA ENERGY, a California corporation; SEMPRA LNG, a Delaware corporation; et al. (See Attachment.)

County of Residence of First Listed Defendant San Diego County
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) '08 CV 0478 JM BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☒ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY
☐ 362 Personal Injury - Med. Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☒ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/ Accommodations
☐ 444 Welfare
☐ 445 Amer. w/Disabilities - Employment
☐ 446 Amer. w/Disabilities - Other
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence
Habeas Corpus:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE/PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs.
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt.Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(a)(2); 28 U.S.C. § 1391(a)(3)

Brief description of cause:
Negligence, breach of contract, and fraud relating to construction of LNG regasification facility in Mexico.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND $ 60,000,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE
03/13/2008

SIGNATURE OF ATTORNEY OF RECORD
[signature]

FOR OFFICE USE ONLY

RECEIPT # 148779 AMOUNT 350 APPLYING IFP JUDGE MAG. JUDGE

3/14/08

CR

ATTACHMENT TO CIVIL COVER SHEET

I. (a) DEFENDANTS (continued)

ENERGIA COSTA AZUL, S. de R.L, de C.V., a Mexican corporation;
BVT LNG COSTA AZUL, S. de R.L. de C.V., a Mexican corporation;
COSTA AZUL BMVT, S.A. de C.V., a Mexican corporation;
BLACK & VEATCH CORPORATION, a Delaware corporation;
TECHINT S.A. de C.V., a Mexican corporation;
THE KLEINFELDER GROUP, INC., a California corporation;
ARUP NORTH AMERICA LIMITED, a United Kingdom corporation;
ARUP TEXAS, INC., a Texas corporation;
WHESSOE OIL & GAS LIMITED, a United Kingdom corporation;
Q&S ENGINEERING, INC., a California corporation;
and DOES 1 through 20, inclusive.